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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

TOM SCOCCA, MADISON  
SOCIETY, INC., and THE  
CALGUNS FOUNDATION, INC.,

Plaintiffs,

vs.

SHERIFF LAURIE SMITH (In her  
individual and official capacity.),  
COUNTY OF SANTA CLARA, and  
DOES 1 to 20,

Defendants.

Case No.: CV 11 01318 - JF

**REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF PLAINTIFFS'  
OPPOSITION TO MOTION TO  
DISMISS**

**Current Date: Aug. 12, 2011**  
**Current Time: 9:00 a.m.**  
**Courtroom 3, 5<sup>th</sup> Floor**

**Honorable Jeremy Fogel**

Pursuant to the Federal Rule of Evidence, Plaintiffs hereby request that this Court take judicial notice of the order filed in *The Calguns Foundation, Inc., v. County of Ventura*, Case No.: 56-2010-00383664-CU-WM-VTA. A true and correct copy of the order filed July 1, 2011 is attached.

Respectfully Submitted on July 22, 2011. /s/ Donald Kilmer

Attorney for Plaintiffs

VENTURA  
SUPERIOR COURT  
FILED

JUL 01 2011

MICHAEL D. PLANET  
Executive Officer and Clerk  
BY:  Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF VENTURA

THE CALGUNS FOUNDATION, INC.,

Petitioner,

vs.

COUNTY OF VENTURA; BOB BROOKS in  
Individual Capacity and Official Capacity as  
Ventura County Sheriff; VENTURA  
COUNTY SHERIFFS DEPARTMENT,

Respondents.

Case No.: 56-2010-00383664-CU-WM-VTA

STATEMENT OF INTENDED *DECISION*

The court has taken under submission the writ application of petitioner Calguns Foundation to compel respondent County of Ventura to produce certain records related to the issuance (and denial) of permits to carry a concealed weapon (CCW). This application is made pursuant to the California Public Records Act (PRA) found at Government Code section 6250, et. seq. The County has provided certain information, but Petitioner contends that they are entitled to additional information which the County has declined to produce. The county has requested a Statement of Decision. This ruling is the court's Statement of Intended Decision.

The petition is granted as stated, explained and limited in this ruling.

The California Public Records Act was first enacted in 1968. The legislative intent is stated in Government Code section 6250. "...[T]he Legislature, mindful of the right of

1 individuals to privacy, finds and declares that access to information concerning the conduct of  
2 the people's business is a fundamental and necessary right of every person in this state." Right  
3 away, the statute confronts the potential tension between an individual's right to privacy and the  
4 right of access to information regarding how Government conducts its business. Having  
5 recognized these two competing interests, the Public Records Act lists certain areas of exception  
6 including areas of exception relating to the judiciary and sworn peace officers. Areas of  
7 exception, however, are narrowly construed, and although the press is frequently the party  
8 seeking access to records, it can be someone with no more than an idle curiosity. See California  
9 State University v. Superior Court, 90 Cal.App.4th, and Marylander v. Superior Court, 81  
10 Cal.App.4th 1119.

11 There are numerous cases since 1968 which address the conflict between privacy and  
12 disclosure as recognized in Government Code section 6250. Privacy and disclosure are both  
13 fundamental rights, and frequently they conflict, requiring courts to engage in a balancing  
14 exercise to see which right is more compelling in any given case. Hill v. NCAA, 7 Cal.4th 1,  
15 gives the following three elements for a court to consider in evaluating a privacy claim: (1) the  
16 legally protected privacy interest, (2) the expectation of privacy, and (3) the extent of the  
17 invasion of the privacy interest.

18 In this case, Petitioner has requested certain records relating to the issuance of, and the  
19 refusal to issue, a permit to carry a concealed weapon. Petitioner is a non-profit organization  
20 whose purpose is to insure that the Second Amendment rights of citizens to own and carry  
21 firearms is properly protected. In this case, they are interested to know if the County is acting in  
22 an even handed manner in evaluating applications it receives for a permit to carry a concealed  
23 weapon. The subject of owning and carrying firearms is often hotly contested by members of the  
24 public, and the court is not intending to engage in that debate in this case. Petitioner's interest is  
25 a legitimate one. It's reason for obtaining the information it has requested is neither specious  
26 nor overbroad.

27 The County has provided a data matrix containing the total number of approved  
28 applications, the number of denied applications, and the number of revoked applications. It has

1 also provided a list of the names, ZIP codes and occupations of persons issued and denied a  
2 CCW permit for the period in question, 01/01/2007 - 07/15/2010. Petitioner is agreeable to a  
3 redaction of social security numbers, drivers license numbers and birthdates, but is still insistent  
4 on the production of pages 11 and 13 of the standard Department of Justice application form.

5 This case is strikingly similar to CBS v. Block, 42 Cal.3d 646, where a similar request for  
6 CCW permits was made under the PRA to the County of Los Angeles. The volume of records at  
7 issue there was 35 pages, a number substantially smaller than is at issue here. That difference  
8 may make the mechanics of compliance more difficult, but it does not change the legal principles  
9 which were discussed at length as part of the 5-2 majority opinion.

10 Initially, the Block court confirmed that the issue which was presented was legitimate.  
11 That is, the public was not in a position to judge whether the responsible county officer was  
12 properly exercising his discretion in issuing concealed weapons permits without being able to  
13 review the reasons why the carry permit was sought, and why it was granted or denied.

14 In Block, the County had declined to release the information to CBS based on the  
15 contention that release of the information would present a safety hazard to persons possessing the  
16 permits. The court thought this was "conjectural" at best. In the case here, the County offers a  
17 similar objection. The declaration of Sgt. James Bullington raises the same objections. The  
18 court agrees that the threat of danger to the permit holder is certainly possible, but it is also  
19 conjectural, and not a valid reason to withhold the requested information.

20 There is no question that there is a collision between the "...fundamental..." right of the  
21 public to know how concealed weapons permits are evaluated, and the privacy concerns of the  
22 individuals applying for those permits. In applying the Hill factors, this court concludes that  
23 there is a low expectation of privacy in persons applying for these permits, and additionally a  
24 low invasion of privacy when appropriate redactions are instituted. The application form itself  
25 contains a warning that "...all..." of the information being provided may be subject to public  
26 disclosure. That, however, does not mandate that all information be disclosed, if for no other  
27 reason than Petitioner does not need all that information. Beyond that, there are legitimate  
28 privacy interests which can be protected by suitable redactions. As stated in Block, because

1 some information may be private and sensitive does not justify withholding the entire document  
2 when redaction can keep sensitive information private.

3 The County argues that reviewing all of the involved documents to redact private  
4 information would be financially oppressive, and states that it would involve an estimated 222  
5 hours [n.b. just under 30 eight hour work days, a seemingly generous estimate] of the time of a  
6 sworn deputy at the overtime rate of \$68.00/hour. The court suggested using a lower  
7 compensated clerical or administrative person. This was not favorably received by counsel for  
8 the County. The court is not going to order who does the redactions. That decision is internal to  
9 the County. This, however, is not a fishing expedition. It is a focused request directed toward  
10 specific documents for a finite period of time. How the County accomplishes what it is obligated  
11 to do is the County's problem to solve.

12 The writ petition is granted. Respondent County of Ventura is ordered to produce within  
13 45 days of the date of this ruling the following:

14 a. Pages 11 and 13 of each application for a CCW submitted to Respondents for the  
15 period January 1, 2007 - July 15, 2010 as well as any additional pages submitted by an applicant  
16 to complete those pages;

17 b. A copy of all carry licenses, license amendments and/or denial letters issued to  
18 applicants for a CCW for the same period;

19 Respondents are further ordered to delete from any records produced the following:

20 a. The home address and home telephone number of peace officers and judicial officers  
21 including commissioners and magistrates;

22 b. The home and business address, home and business telephone number, name of any  
23 business, social security number, physical description, times and places as may appear on page  
24 13, and specific weapon authorized.

25 c. The applicant's medical or psychological history or that of members of his family  
26 and/or household;

27 d. Information related to when the applicant is potentially vulnerable to attack.

28 Petitioner is the prevailing party and is entitled to its statutory costs of suit pursuant to a



1 cost bill.

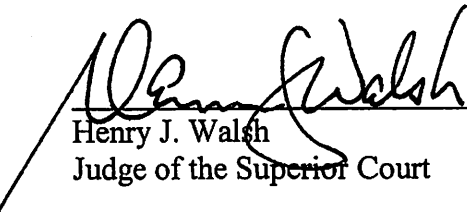
2 Petitioner is entitled by statute to its reasonable attorneys fees. These will be determined  
3 by noticed motion.

4 Counsel for Petitioner is directed to prepare and submit a form of Order and Judgment  
5 consistent with this ruling.

6 This Statement of Intended Decision will become the court's Statement of Decision  
7 unless objections are received within the statutory period. Any party filing objections is directed  
8 to concurrently submit proposed findings on any issue to which an objection is filed.

9 Clerk to give notice.

10  
11 July 1, 2011

  
Henry J. Walsh  
Judge of the Superior Court

PROOF OF SERVICE  
CCP § 1013

STATE OF CALIFORNIA )  
COUNTY OF VENTURA ) ss.

Case Number: 56-2010-00383664-CU-WM-VTA  
Case Title: Calguns Foundation, Inc. v. County of Ventura, et al.

I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the above-entitled action. My business address is 800 S. Victoria Avenue, Ventura, CA 93009. On the date set forth below, I served the within:

STATEMENT OF INTENDED DECISION

On the following named party(ies)

Jason Davis  
27281 Las Ramblas, Suite 200  
Mission Viejo, Ca 92691

Leroy Smith  
County Counsel  
800 South Victoria Avenue, L/C 1830  
Ventura, Ca 93009

       **BY PERSONAL SERVICE:** I caused a copy of said document(s) to be hand delivered to the interested party at the address set forth above on        at        a.m./p.m.


  x   **BY MAIL:** I caused such envelope to be deposited in the mail at Ventura, California. I am readily familiar with the court's practice for collection and processing of mail. It is deposited with the U.S. Postal Service on the dated listed below.

and        **BY FACSIMILE:** I caused said documents to be sent via facsimile to the interested party at the facsimile number set forth above at        a.m./p.m. from telephone number **805-662-6712**.

I declare under penalty of perjury that the foregoing is true and correct and that this document is executed on **July 1, 2011**, at Ventura, California.

MICHAEL D. PLANET, Superior Court  
Executive Officer and Clerk

By:

  
H. McIntyre, Judicial Secretary

**RECEIVED**  
JUL 05 2011

**COUNTY COUNSEL  
VENTURA, CALIFORNIA**